



July 19, 2001

Mr. K. Scott Oliver
Assistant Criminal District Attorney
Civil Section
Bexar County
300 Dolorosa, 5th Floor
San Antonio, Texas 78205-3030

OR2001-3133

Dear Mr. Oliver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149695.

The Bexar County Tax Assessor - Collector's Office (the "tax office") received a request for six categories of information concerning an employee of the Southside Tax Substation. Specifically, the requestor seeks:

- (1) All records of the investigation which led you to the conclusion that Mr. Ron Hilliard was responsible for the loss of monies on November 30, 2001 [sic] at the Southside Tax Substation;
- (2) A copy of the [sic] all operational procedures for the tax office;
- (3) The policy that requires Mr. Hilliard to be responsible to pay the [t]ax [o]ffice the monies being demanded due to your conclusion of his liability;
- (4) A list of all interviewed during the investigation, dates, statements and all information collected during this phase of the investigation;
- (5) All written statements by any staff involved in the interview into the loss of monies on November 30, 2001 [sic]; [and]
- (6) A job description for the position of sub-station manager.

You state that you will be providing the requestor with some of the responsive information, but that the remainder of the requested information, marked as Exhibits 2 and 3, is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received the requestor's letter dated May 22, 2001. *See* Gov't Code § 552.304.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Although section 552.108 applies only to a law enforcement agency, this office has held that records which otherwise qualify for the section 552.108 exception do not necessarily lose that status while in the custody of an agency not directly involved in law enforcement. *Open Records Decision No. 272 at 1-2 (1978)*. *See also* Attorney General Opinion MW-575 (1982); *Open Records Decision Nos. 493 (1988), 272 (1981)*. If an administrative agency's investigation reveals possible criminal conduct that the administrative agency intends to report or has already reported to the appropriate law enforcement agency, section 552.108 will apply to information gathered by the administrative agency if its release would interfere with law enforcement. *See* Gov't Code § 552.108(a)(1), (b)(1); Attorney General Opinion MW-575 (1982); *Open Records Decision Nos. 493 (1988), 272 (1981)*.

Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that some of the requested information was gathered incident to the tax office's investigation into a matter that revealed possible criminal conduct. In addition, you state that "[a]t this time the matter in question, as investigated by the tax office, has been turned over to the Bexar County Sheriff's Department for further and ongoing investigation." Based upon this representation and an examination of the submitted documents, we conclude that release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, Exhibits 2 and 3 may be withheld pursuant to section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

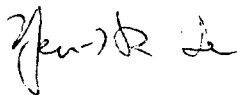
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 149695

Enc. Submitted documents

c: Ms. Teresa Perez-Wiseley
American Federation of State, County and Municipal Employees
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(w/o enclosures)